

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DeAngelo Lamont Mitchell,

Plaintiff,

v.

High Desert State Prison, et al.,

Defendants.

Case No. 2:22-cv-00236-GMN-DJA

Order

Before the Court is Plaintiff's motion for leave to amend his complaint (ECF No. 154) and motion to correct the proposed amendment to fix clerical errors (ECF No. 157). The Court finds that, although Plaintiff's motion is untimely, Plaintiff has shown good cause to extend the deadline to amend. Because the Court finds that Defendants' futility arguments are better made in a motion to dismiss, the Court grants Plaintiff's motion to amend. The Court denies Plaintiff's motion to correct as moot because Plaintiff may simply file the corrected amended complaint on the docket.

I. Discussion.

A. Whether Plaintiff's motion is timely.

Generally, a party may amend its pleading once "as a matter of course" within twenty-one days of serving it, or within twenty-one days after service of a responsive pleading or motion under Rule 12(b), (e), or (f). Fed. R. Civ. P. 15(a)(1). Otherwise, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). However, when the deadline for amending pleadings under a scheduling order has passed, the court's analysis must start with Rule 16(b). *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000) (court correctly applied Rule 16(b) because time to amend pleadings lapsed before party moved to amend); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992) (analysis begins with Rule 16(b) once deadline to amend pleadings has

1 passed). Under Rule 16(b)(4), a “schedule may be modified only for good cause and with the
2 judge’s consent.” Unlike Rule 15(a)’s “liberal amendment policy[,] . . . Rule 16(b) s ‘good cause’
3 standard primarily considers the diligence of the party seeking the amendment . . . [i]f that party
4 was not diligent, the inquiry should end.” *In re W. States Wholesale Nat. Gas Antitrust Litig.*,
5 715 F.3d 716, 737 (9th Cir. 2013), *aff’d sub nom. Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591
6 (2015) (internal quotations and citations omitted); *see also Mammoth Recreations*, 975 F.2d at
7 609-10 (no good cause for amendment when movant knew of facts and theory from the beginning
8 of the case and waited until four months after the deadline for amendments passed to move to
9 amend).

10 Defendants urge the Court to deny Plaintiff’s motion to amend as untimely because
11 Plaintiff did not seek to reopen the deadline to amend pleadings under Rule 16(b). Plaintiff
12 argues that the Court already gave Plaintiff leave to amend his complaint after denying Plaintiff’s
13 prior motion to amend, which motion Plaintiff made before the deadline. So, Plaintiff asserts,
14 Rule 16(b) does not apply here. Defendants have the better argument.

15 The deadline to amend pleadings and add parties passed on February 22, 2023. (ECF No.
16 47). Before that deadline passed, Plaintiff’s prior *pro bono* counsel filed a motion to amend the
17 complaint. (ECF No. 72). The prior assigned magistrate judge, the Honorable Magistrate Judge
18 Brenda Weksler, denied that motion without prejudice. (ECF No. 73). She ordered “that the
19 parties shall meet and confer about Plaintiff’s proposed amended complaint. *See* LR 16-1(d). If
20 the parties cannot reach a resolution, Plaintiff may refile his motion with a meet-and-confer
21 certification.” (*Id.*). On March 21, 2023, the parties sought to extend the deadline to amend
22 pleadings to August 21, 2023. (ECF No. 78). But Judge Weksler denied that request, explaining
23 that the deadline to amend pleadings “is not extended at this time, as the parties did not show
24 excusable neglect for seeking to extend this deadline after it ran.” (*Id.*).

25 The Court does not find that Judge Weksler’s statement that Plaintiff could refile his
26 motion to amend with a meet-and-confer certification to provide unfettered leave to move to
27 amend the complaint at any time. This is particularly true because Judge Weksler later denied the
28 parties’ request to extend the deadline to amend pleadings because the parties did not provide

1 excusable neglect for seeking to extend the deadline after it ran. So, Plaintiff's motion to amend,
2 made nearly two years after the deadline to amend passed, triggers a Rule 16(b) analysis.

3 The Court is concerned that Plaintiff's counsel did not brief Rule 16(b) in the first instance
4 given the Ninth Circuit authority on the matter. Even if counsel believed that they had been
5 granted leave to amend by Judge Weksler's minute order, they should have explained that in their
6 opening brief. Nonetheless, Defendants address Rule 16(b) in their response and Plaintiff
7 addresses it in reply. So, in the interest of moving the case forward, the Court will still consider
8 the merits of the Rule 16(b) analysis, even though Plaintiff did not raise it in the first instance.
9 Under that analysis, the Court finds that Plaintiff has shown good cause to extend the amendment
10 deadline.

11 The delay in Plaintiff's motion to amend his complaint does not appear to have been
12 within his current counsel's control. Plaintiff's current counsel—the law firm Sgro & Roger—
13 explains that Plaintiff's prior counsel did not refile the amended complaint prior to current
14 counsel taking over the matter. (ECF No. 154 at 3). On October 21, 2024, the Court granted
15 Sgro & Roger's substitution into this case and on January 15, 2025, the attorney who brought the
16 motion to amend, Elaine Odeh, Esq., filed a notice of appearance. (ECF Nos. 145, 151). Less
17 than two weeks later, Odeh filed a motion to amend on Plaintiff's behalf, explaining that prior
18 counsel had never sought to amend per Judge Weksler's minute order. And while counsel could
19 have provided more explanation about their belief that the deadline to amend was extended by
20 that minute order, the Court does not find their assumption that the minute order granted leave to
21 later move to amend to be entirely unreasonable. Moreover, Plaintiff's amended complaint
22 predominantly seeks to assert facts that arose after he filed his original complaint, to name
23 defendants about whose involvement Plaintiff's counsel learned through discovery, and to assert
24 claims that did not exist when Plaintiff filed his original complaint. The Court also recognizes
25 that Plaintiff filed his original complaint *pro se*, and so my have struggled to articulate claims that
26 counsel now seeks to clarify. So, although Rule 16(b) applies here, the Court finds that Plaintiff
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1 has shown good cause to extend the time to amend his complaint and thus proceeds to the Rule 15
2 analysis.¹

3 ***B. Whether leave to amend is appropriate.***

4 “The court should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P.
5 15(a)(2). “The court considers five factors [under Rule 15] in assessing the propriety of leave to
6 amend—bad faith, undue delay, prejudice to the opposing party, futility of amendment, and
7 whether the plaintiff has previously amended the complaint.” *United States v. Corinthian Colls.*,
8 655 F.3d 984, 995 (9th Cir. 2011). The nonmovant bears the burden of showing why amendment
9 should not be granted. *Senza-Gel Corp. v. Seiffhart*, 803 F.2d 661, 666 (Fed. Cir. 1986); *see also*
10 *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987) (“party opposing amendment
11 bears the burden of showing prejudice”); *United States for use & benefit of Source Helicopters,*
12 *Div. of Rogers Helicopters, Inc. v. Sayers Constr., LLC*, No. 2:19-v-1602-JCM-EJY, 2020 WL
13 3643431, at *1 (D. Nev. July 6, 2020) (“The party opposing amendment holds the burden to
14 demonstrate futility.”); *Akinola v. Severns*, No. 3:14-CV-00222-HDM, 2015 WL 456535, at *2
15 (D. Nev. Feb. 2, 2015) (“party opposing the amendment carries the burden of showing why leave
16 to amend should not be granted.”).

17 An amendment is futile only if no set of facts can be proved under the amendment that
18 would constitute a valid claim or defense. *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th
19 Cir. 1988). “Denial of leave to amend on [futility grounds] is rare. Ordinarily, courts will defer
20 consideration of challenges to the merits of a proposed amended pleading until after leave to
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22 ¹ The parties also disagree over the quality of their meet and confers and whether Plaintiff
23 sufficiently included a “certification” of the meet and confer in his motion to amend. While
24 Plaintiff’s counsel did not include a declaration regarding the parties’ meet and confer efforts as
25 required by Local Rule IA 1-3(f)(2) in the motion to amend, Plaintiff’s counsel did include this
26 declaration in the reply. So, the Court declines to decide the motion on the certification issue.
27 And while the parties disagree over the quality of their meet and confer, the Court does not find
28 that it was so inadequate as to justify deciding the motion on that ground alone.

The Court takes this opportunity, however, to clarify that, although Plaintiff’s counsel asserts that the parties agreed that an amended complaint “would re-open deadlines that prior counsel on both sides had allowed to lapse,” the Court does not, through this order, extend or reopen any deadlines. (ECF No. 156-1 at 2).

1 amend is granted and the amended pleading is filed.” *GMAC Mortgage LLC v. Nevada*
2 *Association Services, Inc.*, No. 2:13-cv-01157-GMN-NJK, 2018 WL 487101, at *2 (D. Nev. Jan.
3 5, 2018) (internal citations and quotations omitted). “Deferring ruling on the sufficiency of the
4 allegations is preferred in light of the more liberal standards applicable to motions to amend and
5 the fact that the parties’ arguments are better developed through a motion to dismiss or a motion
6 for summary judgment.” *Id.* (internal citations omitted).

7 Here, considering the liberal standards for allowing leave to amend and the fact that
8 Defendants carry the burden of showing why amendment should not be granted, the Court grants
9 Plaintiff’s motion to amend. Defendants’ only arguments against Plaintiff’s proposed amendment
10 that are not about timeliness concern futility. However, denial of leave to amend on futility
11 grounds is rare and it is not clear that no set of facts can be proved under Plaintiff’s amendment
12 that would constitute a valid claim. Defendants’ arguments are thus better developed through a
13 motion to dismiss and the Court grants Plaintiff’s motion to amend.

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15 **IT IS THEREFORE ORDERED** that Plaintiff’s motion to amend (ECF No. 154) is
16 **granted**. Plaintiff must file and serve the amended pleading as required by Local Rule 15-1(b).
17 Because Plaintiff may simply file and serve his corrected amended pleading, his motion to correct
18 (ECF No. 157) is **denied as moot**.

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20 DATED: April 15, 2025,

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23 DANIEL J. ALBREGTS
24 UNITED STATES MAGISTRATE JUDGE
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